

Municipal Solid Waste (MSW) Charging

< TEMPLATE 1 : for MSW only through FEHD service

Sample Provisions to be inserted into tender documents in relation to the provision of cleansing services for Government Bureaux/ Departments >

(for reference by the Private Property Management Sector)

Explanatory Notes

This contract template, extracted from template for Government Bureaux/ Departments, is provided **for reference only** by the private property management companies (PMCs) and Owners' Committees (OCs) when drafting clauses related to Municipal Solid Waste (MSW) Charging in their tender documents for cleansing services contracts before publication of the Commencement Notice of MSW Charging under the relevant Amendment Ordinance.

This template contains clauses **extracted directly** from contract templates for Government Bureaux / Departments that may also be applicable to the cleansing services contracts managed by the PMCs and OCs of private commercial and industrial (C&I) or residential premises. PMCs and OCs should make suitable amendments to accommodate their preferred MSW collection and disposal arrangement wherever appropriate. The Government is not liable for any damage or loss arising in any manner from or in respect of any use or misuse of or reliance on any contents of this template. Users are advised to thoroughly assess the suitability of adopting the same contract provisions based on their own MSW collection and disposal arrangement, and obtain independent legal advice whenever in doubt.

This template (Template 1) is designed to be used when the MSW from the premises is all collected through the Food and Environmental Hygiene Department (FEHD)'s (or its contractors') service (including disposal of MSW at FEHD's Refuse Collection Points (RCPs)) such that the MSW is charged by designated bags/ labels. There is another template (Template 2) that is designed to be used when the MSW from the premises is all collected by private waste collectors (PWCs) such that the MSW collected by PWCs' compactor type refuse collection vehicles (RCVs) (i.e.

“waste vehicles in private use (with compactors)” in the template) is charged by designated bags/ labels while the MSW collected by PWCs’ non-compactor type RCVs (i.e. “waste vehicles in private use (without compactors)” in the template) is charged by weight through gate-fee. The differences between Templates 1 and 2 are highlighted in yellow to facilitate PMCs and OCs to identify the appropriate requirements/ modifications to be adopted based on the waste collection services involved. For instance, relevant provisions from both templates may be included in case a premises is served by both FEHD (or its contractor) and a private waste collector.

Contract drafters are reminded that under the "polluter-pays" principle, regardless of the waste collection service(s) adopted and the charging mode(s) applicable, **waste producers (e.g., individual owners/ households/ tenants) are responsible for the concerned MSW charges, which should not be passed on to any party among PMCs / cleansing contractors/ private waste collectors.** PMCs and OCs should be aware that due to the more unpredictable nature of the compliance rate of individual households/ tenants with respect to the use of designated bags/ labels, the cleansing contractors are subject to a potentially higher risk of shouldering extra costs in handling the non-compliant waste collected in private premises than in Government premises. To adhere to the "polluter-pays" principle, PMCs and OCs are advised to incorporate more flexible and favorable clauses in the contract to facilitate the reimbursement of any extra costs incurred from the handling of non-compliant waste, which is not covered under the original contract. For example, PMCs and OCs could consider specifying that a low compliance rate is a valid reason for the Contractor to be eligible to apply for reimbursement of the MSW Charge Deficit (Clause 7.4 of Template 1 refers), and a simple application procedure should be adopted as far as possible.

Contract drafters’ attention is also drawn to “Part B - Supplement to the Price Schedule” of the templates in which “N” (i.e. the “estimated number of months within the Contract Period during which the MSW Charging Scheme comes into force”) for calculating the “total amount of the MSW Payment over the Contract Period” in the schedule table is used for price comparison only. The final payment should be based on the actual number of months within the Contract Period during which the MSW Charging Scheme comes into force. For the purpose of estimating “N”, contract drafters should note that MSW charging will be implemented on 1 April 2024.

Part A –the MSW Schedule (to be inserted as a stand-alone Schedule)

Schedule < xx > – Provisions in relation to the MSW Charging Scheme

1. Interpretation

“Amendment Ordinance”	means the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Ordinance 2021;
“designated bags” and “designated labels”	have the meanings given to them in the WDO;
“D-bags” and “D-labels”	means designated bags and designated labels respectively;
“gate fee”	means the charges at the unit rates as set out in Sections 2, 3(a) and 4 of Part 1 of the Schedule to the Waste Disposal (Charge for Disposal of Municipal Solid Waste at Scheduled Facilities) Regulation (formerly known as Waste Disposal (Refuse Transfer Station) Regulation), Cap. 354M of the Laws of Hong Kong (“Cap 354M”) which are not applicable under this MSW Schedule;
“Group 2 facility service fee”	means the charges at the unit rates as set out in Section 3(b) of Part 1 of the Schedule to Cap 354M for disposing of MSW at a Group 2 facility (as defined in the aforesaid Part 1) from a waste vehicle in private use (with compactor) which is not applicable under this MSW Schedule;
“Locations”	means those locations as specified in Annex 1 to this MSW Schedule;
“Monthly Administrative Fee (MSW)”	means the amount to be quoted on top of the Quoted MSW Charges in the Price Schedule;
“Monthly Period”	has the meaning given to the term in paragraph 4.2 of this MSW Schedule;
“Government MSW Payment”	means a monthly quotation in the Price Schedule comprising the Quoted MSW Charges and the Monthly Administrative Fee (MSW);

“MSW Charging Scheme”	means a quantity-based charging scheme for the disposal of municipal solid waste under the WDO;
“MSW”	means municipal solid waste which is covered by the MSW Charging Scheme;
“MSW Charges”	means the charges payable under the MSW Charging Scheme at the unit rates as specified in Schedule 14 of the WDO, and for these rates as at the date of the Tender Documents, are now repeated in paragraph 5.3 of this MSW Schedule;
“MSW Schedule”	means this Schedule;
“Procuring Department”	means the Government bureau or department which procures the Services under the Contract;
“Quoted MSW Charges”	means a monthly quotation to cover the cost of disposing the MSW under the MSW Charging Scheme based on the estimate of MSW as stated in Annex 1 to this MSW Schedule and the applicable unit rates of the MSW Charges;
“RCP”	means refuse collection point as defined in the WDO;
“waste vehicle in Government service” (in upper or lower case)	has the meaning given to the term in the WDO;
“waste vehicle in private use (with compactor)” (in upper or lower case)	has the meaning given to the term in the WDO;
“waste vehicle in private use (without compactor)” (in upper or lower case)	has the meaning given to the term in the WDO;
“waste vehicle in private use (with or without compactor)” (in upper or lower case)	means waste vehicle in private use (with compactor) or waste vehicle in private use (without compactor);
“WDO”	means Waste Disposal Ordinance (Cap. 354 of the Laws of Hong Kong) as amended by the Amendment Ordinance and from time to time.

2. Introduction - The Municipal Solid Waste (MSW) Charging Scheme

- 2.1. The Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Ordinance 2021 (viz., “Amendment Ordinance”), which amends the Waste Disposal Ordinance (Cap. 354 of the Laws of Hong Kong) (viz., “WDO”) and its subsidiary legislations to establish a quantity-based charging scheme for the disposal of municipal solid waste (viz., “MSW Charging Scheme”), was passed by the Legislative Council on 26 August 2021.
- 2.2. The Amendment Ordinance will come into operation on a date to be appointed by notice published in the Gazette. For full details of the legal requirements concerning MSW Charging, please refer to the gazetted version of the Amendment Ordinance at <https://www.gld.gov.hk/egazette/pdf/20212535/es12021253525.pdf>.
- 2.3. Even if the Amendment Ordinance may not yet come into effect as at the date when the Contract is awarded, the Government requires the Tenderer to submit a monthly quotation in the Price Schedule to be known as the “Government MSW Payment” to comprise the amount(s) as further specified in paragraph 3 below. This Government MSW Payment will only be payable by the Government to the Contractor as and when the MSW Charging Scheme comes into effect during the Contract Period. The amount will be payable in arrears and on a monthly basis in accordance with paragraph 8 of this MSW Schedule. This Government MSW Payment as quoted by the Tenderer shall have to be included in the tender price to be evaluated in the price assessment in the Marking Scheme.

3. Tenderers’ obligations

- 3.1. The Government MSW Payment shall be quoted by the Tenderer in the Price Schedule having regard to the monthly estimate of the Government municipal solid waste which is covered by the Municipal Solid Waste Charging Scheme (viz., “MSW”) provided by the Government in Annex 1 to this MSW Schedule, and the unit prices of the designated bag and designated label set out in Schedule 14 to the WDO (and such unit prices as at the date of this Invitation to Tender are repeated in paragraph 5.3 below) (viz., collectively, “Quoted MSW Charges”).
- 3.2. The Tenderer may also include in the Government MSW Payment to be quoted in the Price Schedule a reasonable amount of the monthly administrative fee in performing the Contractor’s obligations as stated in this MSW Schedule not already covered by the Quoted MSW Charges (viz., “Monthly Administrative Fee (MSW)”) which amount shall be separately quoted in the breakdown of the Government MSW Payment.

Annex 1

- 3.3. The Tenderer is advised not to under-quote the Quoted MSW Charges. This is because to the extent that the Tenderer has under-quoted, and the actual MSW Charges incurred by it as the Contractor (should the Contract be awarded to it) are higher than the amount of the Quoted MSW Charges, it would have to bear the difference without recourse to the Government unless paragraph 7.4 of this MSW Schedule applies.

4. Waste Types to be handled

- 4.1. All waste covered by this Contract is MSW <except for paper/plastic/glass/metal waste to be recycled, if any>.
- 4.2. Unless otherwise stated, all provisions of this MSW Schedule (apart from paragraphs 1, 2, 3 and 9) take effect on the date when the MSW Charging Scheme commences into operation (i.e. when the Amendment Ordinance commences into operation) and shall remain in effect throughout the remainder of the Contract Period. This period will be split into consecutive monthly periods. For paragraphs 1, 2, 3, and 9, they shall come into effect as soon as the Contract comes into effect.
- 4.3. Each of these “monthly period” shall match with the ongoing monthly billing period already adopted in the Contract for monthly payment of the Services and measurement of the performance level of the Services (“monthly period (original)”. So that if a monthly period (original) has already started for the Contract when this MSW Schedule comes into effect, that monthly period for the MSW Schedule shall end at the same time as that monthly period (original).

5. Contractor’s obligation in handling of Municipal Solid Waste (MSW)

- 5.1. Upon the MSW Charging Scheme coming into operation, the Contractor is required to procure at its own cost D-bags and D-labels for the collection and disposal of MSW. Since as mentioned in paragraph 5.2 below, the Contractor is not required to deploy any Waste Vehicle in Private Use (With or Without Compactor) in the removal of the MSW, no gate fee or Group 2 facility service fee will be payable.
- 5.2. Under the MSW Charging Scheme, the Contractor shall adopt the following waste disposal arrangements:

<Editorial note: please delete the inapplicable (a) below.>

- (a) MSW shall be properly wrapped in designated bags or affixed with a designated label for oversized waste before it can be deposited onto a waste

vehicle operated by FEHD or a contractor of FEHD (viz., “Waste Vehicle in Government Service”).

OR

- (a) MSW shall be properly wrapped in designated bags or affixed with a designated label for oversized waste before the Contractor may dispose of the same at an RCP.

OR

- (a) MSW shall be properly wrapped in designated bags or affixed with a designated label for oversized waste before the Contractor may deposit the same at a designated collection area within the building of the Location(s) for removal by the management company of the building.

- 5.3. The MSW Charges (in the form of D-bags and D-labels) shall be payable by the Contractor at the unit prices as prescribed in Schedule 14 to WDO. As at the date of this Invitation to Tender, the unit prices are summarized below. The MSW Charges shall be deemed to have been included in the Quoted MSW Charges as part of the Government MSW Payment regardless of whether the actual MSW Charges incurred by the Contractor are higher or lower than the Quoted MSW Charges.

- (a) Unit prices of designated bags (\$ / bag)

3L	5L	10L	15L	20L	35L	50L	75L	100 L	240 L	660 L
\$0.3	\$0.6	\$1.1	\$1.7	\$2.2	\$3.9	\$5.5	\$8.5	\$11	\$26	\$73

- (b) Unit price of designated label

\$11 per label

- 5.4. The Contractor shall supply and maintain sufficient quantity of designated bags and designated labels to cater for the disposal of MSW. The Contractor shall maintain an electronic file (template to be provided by EPD) on the stock and usage of the designated bags and designated labels and to replenish the stock in good time.
- 5.5. The Contractor shall procure all necessary designated bags and designated labels from the retail outlets or online platform which are authorized by the DEP to sell such designated bags and designated labels under the WDO.
- 5.6. The Contractor shall make the best use of the designated bags in order to minimize any wastage, e.g. using smaller designated bags if practicable. Unless under exceptional circumstances (e.g. rupture of designated bags during the course of waste

collection), the Contractor shall avoid using another designated bag to wrap waste that has already been wrapped with a designated bag.

- 5.7. The Contractor shall propose and execute control and monitoring measures to achieve proper use of designated bags or designated labels for handling MSW. The control and monitoring measures shall be proposed to the Procuring Department's satisfaction and approved by the Government Representative before execution.

6. Other Contract requirements for handling MSW

- 6.1. The approved waste disposal bags for MSW to be used under the Contract after the MSW Charging Scheme coming into operation shall be the "designated bags" as defined in the WDO.
- 6.2. The Contractor is required to facilitate the Government Representative in conducting joint waste survey not less than once every < 6 > months using the template as set out in Appendix 1 to this MSW Schedule.
- 6.3. The Contractor shall provide sufficient quantity of tools, equipment, and the correct bags and labels to facilitate the collection and disposal of MSW.
- 6.4. The Contractor shall facilitate the Government Representative to carry out waste reduction and recycling measures. Any waste intended for recycling and designated to a place for recycling is not required to be put into D-bags or affixed with D-labels and shall not be loaded to the Waste Vehicle in Government Service or disposed of at any RCP.
- 6.5. The Contractor shall comply with the requirements of the WDO as amended from time to time (but not just the Amendment Ordinance) when disposing the waste collected. The Contractor shall provide adequate guidelines, training, equipment and necessary means to its employees and / or staff to comply with the requirements of the WDO.

7. Payment

- 7.1. In respect of each monthly period, the Government will pay the Government MSW Payment quoted by the Contractor in the Price Schedule in arrears. Where a monthly period is an incomplete calendar month, the Government MSW Payment will be payable on a pro rata basis by first determining the daily rate of the Government MSW Payment to be divided by 30 and then multiply the daily rate by the number of days in that monthly period.

Appendix 1

- 7.2. In respect of each monthly period, the Contractor will be required to pay the MSW Charges directly which are incurred by the Contractor in the course of the provision of the Services. The Contractor is required to bear the actual MSW Charges payable in respect of any monthly period to the extent that they are higher than Government MSW Payment (whether or not including or excluding the Administrative Fee (MSW)) (and the amount of the deficit to be calculated by excluding the Administrative Fee (MSW) shall be known as “MSW Charge Deficit”) unless the Contractor can point to any circumstances beyond the control of the Contractor which have led to the sudden upsurge of the quantities of the MSW (see paragraph 7.4 below). On the other hand, if and to the extent that in respect of any monthly period, the summation of the actual MSW Charges and Monthly Administrative Fee (MSW) fall below the Government MSW Payment (or the pro rata amount thereof in the case of an incomplete calendar month), the Contractor can keep the difference.
- 7.3. In respect of each monthly period, the Contractor shall stock take the monthly number of designated bags / designated labels actually used.
- 7.4. Under exceptional and/or unforeseen circumstances, within 3 months from the occurrence of such circumstances, the Contractor may consider to submit an application together with supporting documents and justifications to the Government Representative requesting the Government to reimburse it any MSW Charge Deficit in respect of any monthly period. Upon receiving the application, the Government Representative will evaluate the application to consider whether the case involves any exceptional and/or unforeseen circumstance which has caused the MSW Charge Deficit. Subject to the result of vetting conducted by Government Representative, the Government Representative may approve the whole or part of the requested reimbursement amount or reject the application.

8. Records of MSW removed

- 8.1. Prior to the commencement of the MSW Charging Scheme, the Contractor is responsible for recording the < monthly > quantity of MSW removed (e.g. number and size of garbage bags used, tonnage of waste and waste type from each < office floor / building >) and provide such records to the Government Representative in an electronic file (template to be provided by EPD).

List of Annexes and Appendices to the MSW Schedule

Annex 1 - Estimated quantities of MSW to be handled by using Designated Bags (DB), Designated Labels (DL)

Appendix 1 - Template for Joint Waste Survey

Supplement to the Price Schedule
Waste Disposal Arrangements

Quotation of the Government MSW Payment (see Paragraph 3 of the MSW Schedule)

A Government MSW Payment to be quoted in this Schedule will only be payable upon commencement of MSW charging in arrears in respect of each monthly period.

Location Item	Service Location	Description	the Quoted MSW Charges per month (A) HK\$	the Monthly Administrative Fee (MSW) (B) HK\$
1.	<to be completed> (MSW will be removed from this Location by FEHD or its contractor and hence no gate fee shall be payable.)	performance of all obligations in relation to MSW as stated in the MSW Schedule		
2.	<to be completed> (MSW will be removed from this Location by FEHD or its contractor and hence no gate fee shall be payable.)	performance of all obligations in relation to MSW as stated in the MSW Schedule		
	Total amount of the Government MSW Payment per month (X) = (A) + (B) for all <2> Location Items above (HK\$)			

	<p>Total amount of the Government MSW Payment over the Contract Period: (X) multiplied by N</p> <p>N = the estimated number of months within the Contract Period during which the MSW Charging Scheme comes into force, viz., <xx> months</p>	
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Notes:

1. The quotation of the Quoted MSW Charges shall cover the cost per month of disposing the MSW under the MSW Charging Scheme based on the estimate of MSW as stated in Annex 1 to this MSW Schedule and the applicable unit rates of the MSW Charges (viz., whether it be the unit price for D-bags or for D-labels). These unit rates as at the date of this Invitation to Tender are set out in paragraph 5.3 of the MSW Schedule.
2. The quotation of the Monthly Administrative Fee (MSW) shall cover a reasonable amount of the monthly administrative fee in performing other Contractor's obligations as stated in this MSW Schedule (viz., "Monthly Administrative Fee (MSW)") not covered by the Quoted MSW Charges which amount shall be separately quoted in the breakdown of the Government MSW Payment.
3. If the Tenderer fails to submit the Quoted MSW Charges and/or the Monthly Administrative Fee (MSW) <for any Location Item>, it shall be assumed that zero amount shall be chargeable. This is unless upon subsequent clarification with the Tenderer (which the Government may but is not obliged to make), the Tenderer denies such intention in which case, the Tenderer's Tender <for the Group to which that Location Item belongs> will not be considered further.

<Editorial Note: please retain the words in brackets above if the Invitation to Tender evaluates Tenders on a Group by Group basis so that partial disqualification is possible.>

4. The "N" (i.e. the estimated number of months within the Contract Period during which the MSW Charging Scheme comes into force) and the "Total amount of the Government MSW Payment over the Contract Period" in the above table are used for price comparison only. The final payment should be "X" multiplied by the actual number of months within the Contract Period during which the MSW Charging Scheme comes into force.

Annex 1 - Estimated quantities of MSW to be handled by <using Designated Bags (DB), Designated Labels (DL)>

This Annex is solely for the Tenderers' reference and is only applicable upon the commencement of the MSW Charging Scheme.

	Service Location	Size of DB or DL required	Monthly quantity estimated by the Procuring Department		Unit Price (HK\$)
			Number of DB	Number of DL	
1.	EPD Offices on 10/F, Shatin Government Offices, No.1 Sheung Wo Che Road, Sha Tin, New Territories	100L DB	400		11
		DL		40	11
2.	EPD Offices, 34-36/F, Hopewell Centre, Wan Chai	50L DB	20		5.5
		100L DB	280		11
		DL		80	11
3.	EPD Offices on 8/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories	50L DB	20		5.5
		100L DB	440		11
4.	EPD Offices on 6-12/F, Chinachem Tsuen Wan Plaza, Tsuen Wan	100L DB	100		11
5.	EPD Offices, 5/F, Nan Fung Commercial Centre, Kowloon Bay	100L DB	240		11
6	GREEN@EASTERN, 30 Oi Shun Road, Shau Kei Wan	100L DB	30		11

Name of B/D: **<B/D name>**

Note 1: B/Ds should insert additional columns or remove the unused columns to reflect the sizes of bags being used.


Note 2: B/Ds' representative(s) should jointly work with the contractor staff to carry out the waste survey for not less than 1 week during the stipulated period. Photos of checking the numbers of DBs/DLs and coloured bags and oversized EGW should also be attached to this file.

Date: < 31 Jan 2023 >

Date: < 31 Jan 2023 >


Photo Plates of the Joint Waste Survey (if applicable)

< Date of Photo taken >




Using Designated Bags
<Description, e.g. location of the survey in action>

< Date of Photo taken >



Using Designated Labels
<Description>

< Date of Photo taken >



Using Coloured Bags
<Description>

< Date of Photo taken >



Oversized EGW [Not applicable to non-Government premises]
<Description, e.g the temporary storage space with oversized EGW>